

U.S. Department of Justice

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Civil Division*

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July 21, 2023

MEMORANDUM ENDORSED

Via CM/ECF

Hon. Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
40 Foley Square, Room 435
New York, NY 10007

Re: *Devin Renee Smith v. Acting Commissioner of Social Security*
Civil Action No. 1:22-cv-09508-JGLC-GWG

Dear Judge Gorenstein:

This Office represents the Acting Commissioner of Social Security (Commissioner), the Defendant in this matter. We write respectfully in response to the Court's July 13, 2023 Scheduling Order that states:

Pursuant to Rule 5, 6, and 7 the Supplemental Rules for Social Security Actions under 42 U.S.C. ' 405(g), the following briefing schedule is in effect: (A) Plaintiff shall file their brief for requested relief on or before August 7, 2023. (B). The defendant shall file their brief in opposition on or before September 6, 2023. (C). Plaintiff may file a reply brief on or before September 20, 2023.

ECF No. 24. This case was commenced through the filing of a Complaint on November 7, 2022. ECF No. 1. Consequently, this case is not governed by the Supplemental Rules. *See In re Briefing of Social Security Cases*, M 10-46, issued on November 18, 2022 ("WHEREAS, cases filed on and after December 1, 2022 under 42 U.S.C. §405(g)... are governed by the simplified procedure set forth in the Supplemental Rules for Social Security Actions...").

This case is instead governed by the Standing Order *In Motions for Judgment on the Pleading in Social Security Cases*, M 10-468, issued on April 20, 2016 (the 2016 Standing Order) which provides each party 60 days to file a motion for judgment on the pleadings. ECF No. 5. Accordingly, the Commissioner respectfully requests that the Court amend the July 13, 2023 Scheduling Order to provide the Defendant 60 days from the date Plaintiff files his motion to file

her cross-motion, consistent with the 2016 Standing Order. Plaintiff's counsel consents to this request.

We thank the Court for its consideration of this request.

Respectfully submitted,

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BY: *s/ Padma Ghatare*

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Application granted. The defendant's brief shall be filed by October 6, 2023. Any reply shall be filed by October 21, 2023.

So Ordered.



GABRIEL W. GORENSTEIN
United States Magistrate Judge

July 21, 2023